05-11082
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE: DAVID NEAL MCKENZIE DEBTOR	CASE NUMBER: 05-20071-FRM-7 CHAPTER 7
JPMORGAN CHASE BANK, N.A., TRUSTEE, AS SERVICED BY OCWEN LOAN SERVICING, LLC ITS SUCCESSORS IN INTEREST AND/OR ASSIGNEES MOVANT	HEARING ON MOTION TO LIFT STAY
VS.	
DAVID NEAL MCKENZIE MARSHA G. MILLIGAN (TRUSTEE) RESPONDENT	TIME:

MOTION FOR RELIEF FROM STAY
OF ACTION AGAINST PROPERTY AND
WAIVER OF THIRTY DAY REQUIREMENT

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS. IF NO RESPONSE IS FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF SERVICE, NO HEARING WILL BE HELD AND THE RELIEF REQUESTED IN THE MOTION WILL BE GRANTED WITHOUT A HEARING BEING HELD. A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE HONORABLE BANKRUPTCY JUDGE:

JPMORGAN CHASE BANK, N.A., TRUSTEE, AS SERVICED BY OCWEN LOAN SERVICING, LLC ITS SUCCESSORS IN INTEREST AND/OR ASSIGNEES, Movant, by and through its attorneys, requests relief from the Automatic Stay of 11 U.S.C. Sec. 362 which protects the property of DAVID NEAL MCKENZIE, Debtor, and MARSHA G. MILLIGAN, Trustee. In support thereof represents to the Court:

I.

Debtor filed a Voluntary Petition for Relief under 11 U.S.C. Chapter 7 on December 5, 2005. MARSHA G. MILLIGAN was named Chapter 7 Trustee and is acting as same. This Court has jurisdiction of this proceeding pursuant to 28 U.S.C. 1334 and 157 and 11 U.S.C. 105 and 362.

II.

Movant, a valid secured creditor of the Debtor, is the owner and holder of a Deed of Trust Note in the original principal amount of $178,000.00 and first lien purchase money Deed of Trust which encumber the following real property with improvements now owned by, and in the possession of Debtor.

> LOT 14, BLOCK 3, CHERNOSKY SUBDIVISION #9, AN ADDITION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN BOOK 4, PAGE 190, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

Said Note and Deed of Trust were assigned to Movant. True and correct copies of the Note (Exhibit A) and Deed of Trust (Exhibit B) are attached hereto and incorporated herein for all purposes.

III.

Debtor has not offered adequate protection to Movant nor made regular timely payments to Movant as required by the Note and Deed of Trust. The arrearage due and owing to Movant exceeded $12,785.22 plus Movant's allowable attorney's fees as of December 1, 2005 and is increasing by $1,352.93 per month. Such failure to make regular payments deprives Movant of adequate protection, and is "cause" under 11 U.S.C. Sec. 362 (d)(1) for the termination of the Automatic Stay as to Movant.

IV.

Alternatively, the total of obligations secured by the property equal or exceed the value of the property. As of December 22, 2005 the sum of approximately $193,764.90 plus Movant's allowable attorney's fees was owed on the debt. This amount is increasing at the rate of $40.05 daily for accrued interest, plus escrow advances and Movant's reasonable post petition attorney's fees. Debtor has no equity in the property and is not receiving income from the property. Since this is a Chapter 7 case there is no necessity for reorganization. The amount of other secured claims against the property is unknown to Movant at this time.

V.

It has been necessary for Movant to hire the law firm of Brown & Shapiro, L.L.P. to collect the debt owed to it through this Court. Pursuant to the Note and Deed of Trust, Movant is entitled to reimbursement of its reasonable attorneys fees for their services.

WHEREFORE Movant, JPMORGAN CHASE BANK, N.A., TRUSTEE, AS SERVICED BY OCWEN LOAN SERVICING, LLC ITS SUCCESSORS IN INTEREST AND/OR ASSIGNEES, prays that upon hearing of this Motion, the "Automatic Stay" be immediately terminated as to Movant, that the Court waive applicability of Rule 4001(a)(3) and that Movant be permitted to pursue its contractual, statutory, and other available remedies. Alternatively, Movant prays that it be afforded adequate protection including, but not limited to the immediate cure of Debtor's default. Movant additionally prays for such other and further relief in law and equity as is just.

Respectfully Submitted,

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RE:OCWEN LOAN SERVICING, LLC (BFB)